

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

2008 JUN 29 AM 11:49

UNITED STATES OF AMERICA,

v.

DONALD UBELE,

Defendant.

CASE NO. CR405-12

O R D E R

Before the Court are Defendant Donald Ubele's "Motion to Preserve and Stay 28 U.S.C. § 2255" (Doc. 88) and "Motion to Clarify and Expand upon Petitioner's Motion for an Extension of Time Under Equitable Tolling" (Doc. 90).

Defendant was convicted of one count of possession of firearms by a convicted felon and one count of possession of an unregistered machine gun on May 22, 2006. On May 28, 2008, Defendant filed a "Motion to Preserve and Stay 28 U.S.C. § 2255," preemptively asking the Court to equitably toll the one year statutory limitation on the filing of a § 2255 petition.¹ On June 19, 2008, the Government responded that it would reply to a request for equitable tolling when such a document was filed.²

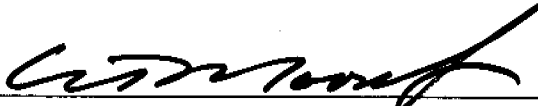
¹ The statutory limitation period for filing a § 2255 petition would run in Defendant's case on June 4, 2008.

² Although Ubele may have believed he was asking for equitable tolling in his May 22 motion, the Government

On July 23, 2008, Defendant filed a "Motion to Clarify and Expand upon Petitioner's Motion for an Extension of Time Under Equitable Tolling," in which he argued for application of equitable tolling due to his attorney's failure to turn over the case file. On July 28, 2008, the Government responded by asking the Court to construe the initial motion as a petition for § 2255 habeas relief and to open a civil case.

The Clerk of the Court is **DIRECTED** to open a civil case and docket Petitioner's Motion to Preserve and Stay (Doc. 88) as a 28 U.S.C. § 2255 petition.

SO ORDERED this 29th day of August, 2008.



WILLIAM T. MOORE, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

understood that motion to be an attempt to provide a "placeholder" for a later § 2255 petition.